

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR08-402

JERMAL DOTSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** January 14, 2009

APPEAL FROM THE HEMPSTEAD  
COUNTY CIRCUIT COURT  
[NO. CR-07-446-1]

HONORABLE WILLIAM RANDAL  
WRIGHT, JUDGE

REBRIEFING ORDERED

**JOHN MAUZY PITTMAN, Judge**

This is an appeal from the denial of appellant's motion to transfer his criminal case to the juvenile division of circuit court. We order rebriefing because appellant egregiously violated the abstracting rule by failing to abstract testimony that was unfavorable to his argument and that was necessary for a resolution of the issue presented.

Appellant was required, on appeal, to provide us with an abstract consisting of an impartial condensation of the parts of the testimony that are material and necessary to an understanding of the questions presented on review. Ark. Sup. Ct. R. 4-2(a)(5). The question presented on review in this case is whether the evidence was sufficient to support the trial judge's finding that the juvenile could not be rehabilitated and should be tried as an adult.

Pursuant to Ark. Code Ann. § 9-27-318(g) (Repl. 2008), the trial court is required in the transfer hearing to consider, *inter alia*, all of the following factors: the seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal

division of circuit court; whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted; and the culpability of the juvenile, including the level of planning and participation in the alleged offense. However, appellant utterly failed to abstract the testimony of Officer Courtney of the Hope Police Department, for example, that describes the circumstances of the crime. All that appellant saw fit to mention in regard to this testimony was that several items were taken but were recovered, that the victim was not injured, and that “the gun” was loaded, without identifying who had the gun or how it was employed in the crime. The evidence that appellant, wearing a ski mask with two accomplices providing a distraction, approached the victim with a handgun as he sat in his vehicle in a residential neighborhood, robbed the victim of his money and jewelry, forced the victim to drive him to his bank and retrieve an additional \$500 from the ATM for appellant, and held the loaded handgun to the victim’s rib cage during the entire incident was not mentioned. This evidence, and perhaps other proof not abstracted, is crucial to a determination of whether the trial court properly weighed the factors listed in section 9-27-318(g), and the selectivity shown in abstracting the few bits of favorable material from that testimony strongly suggests that the omission was not accidental.

In accordance with Rule 4-2(b)(3), we hereby order appellant to submit within fifteen days a substituted brief that contains a revised abstract of all testimony necessary to an understanding of the issues presented to this court on appeal. After the substituted brief has

been served on the appellee, the appellee may file a responsive brief in the time set by the Clerk of this court or may rely on the brief previously filed in this case.

Rebriefing ordered.

GLADWIN and GLOVER, JJ., agree.